IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

In re:	)	
JEFFERSON COUNTY,	)	
ALABAMA, a political subdivision	)	**Case No. 11-05736-9**
of the State of Alabama,	)	
	)	
Debtor.	)	

OBJECTION TO MOTION FOR CLARIFICATION
FILED BY SHERIFF MIKE HALE

I. Introduction.

Petitioner Lara Swindle ("Plaintiff") by and through undersigned counsel, respectfully files the following objections to the Motion for Clarification Regarding the Automatic Stay filed by Sheriff Mike Hale in this case. Doc. no. 299. Sheriff Hale's motion requests resolution of "whether litigation against Sheriff Hale and Jefferson County Deputy Sheriffs are included within the parameters of the automatic stay afforded [to Jefferson County] under 11 U.S.C. §§ 362 and 922." Doc. no. 299 at 3. Ms. Swindle filed a lawsuit against Sheriff Mike Hale in his official capacity as Sheriff and Deputies David Newton and Randy Stone in their individual capacities, which is pending in *Swindle v. Mike Hale, et al.*, 2:09-cv-01458-SLB, in the Northern District of Alabama. Jefferson County is not a defendant in that case.

The automatic stay imposed by the Jefferson County bankruptcy filing does not apply to Ms. Swindle's case against Sheriff Hale and the other defendants in her case,

none of whom are debtors in this case. First, the plain language of 11 U.S.C. §§ 362(a)and 922(a) does not extend the stay to non-debtors. Second, the Eleventh Circuit has not recognized any "special circumstances exception" found in other circuits to the universal rule that actions against non-debtors are not stayed. Even if such an exception was sanctioned in this Circuit, the exception as applied in other circuits would not apply to Ms. Swindle's case. In the alternative, Ms. Swindle requests that this Court for grant relief from the automatic stay so that Ms. Swindle can continue to prosecute her claims against all three defendants in that case. Alternatively, Swindle has demonstrated "good cause" for relief from the stay under 11 U.S.C. § 362(d), as set forth below.

I. Plaintiff's Claims Are Pending in the Northern District of Alabama and Substantial Progress Has Been Made in that Case.

On July 21, 2009, Lara Swindle filed her complaint in *Swindle v. Mike Hale, et al.*, 2:09-cv-01458-SLB, in the Northern District of Alabama against Sheriff Hale in his official capacity and Deputies David Newton and Randy Stone in their individual capacities. *See* Ex. A (Complaint). Also named as defendants in that case were Jefferson County, the Jefferson County Commission and the Jefferson County Personnel Board. *Id.* ¶ 6. Swindle alleged that while she was employed as a laborer by employees of the Jefferson County Sheriff's Department, she was sexually

harassed and subject to retaliation by the Sheriff's Department through the actions of several deputies, including Deputies Newton and Stone. *Id.* ¶¶ 5-9. Swindle alleged that the actions of these parties violated, *inter alia*, Title VII, the Equal Protection Clause of the Fourteenth Amendment, and various Alabama tort laws. *Id.* ¶¶ 44-78.

Jefferson County was initially named as a defendant in Swindle's lawsuit, but has since been dismissed. Several of the defendants, including Jefferson County and the Jefferson County Commission, filed motions to dismiss. *See* Exs. B, C & D (Motions to Dismiss). In their motion, Jefferson County and the Jefferson County Commission argued that "the Jefferson County Commission has no control or authority over the Sheriff's Department, and that Plaintiff is not an employee of Jefferson County, Alabama." Ex. B at 4.[1] Sheriff Hale echoed that argument and

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[1] In support of that motion, Jefferson County submitted an Affidavit by Commission President Bettye Fine Collins in which she testified that

> Neither the Jefferson County Commission nor any individual commissioner has the authority to control or direct the day to day activities of the Jefferson County Sheriff's Department. The Sheriff of Jefferson County is responsible for the establishment and implementation of policies and procedures governing the operation of the Jefferson County Sheriff's Department. The entire operation of the Jefferson County Sheriff's Department is carried out by the Jefferson County Sheriff in accordance with the policies established by the Sheriff in keeping with state law.
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> **The Jefferson County Commission only provides funds for the Jefferson County Sheriff's Department which the Sheriff uses and applies as he determines is appropriate.**

Ex. B-2 (emphasis added).

urged the district court to find that he was entitled to sovereign immunity from suit: "Under Alabama law, sheriffs are deemed executive officers of the state" so that "lawsuits against sheriffs in their official capacities are, in essence, lawsuits against the state." Ex. C at 4.

In a memorandum opinion issued on March 30, 2010, the district court noted the "extensive caselaw recognizing that the Sheriff's employees are ***state*** employees and not ***county*** employees and that [Jefferson] County does not make policy for the Sheriff's department". Ex. E at 9 (Memorandum Opinion)(emphasis in original). The district court also ruled that "Sheriff Hale is entitled to Eleventh Amendment immunity for all claims except the Title VII claims, [so that] all claims against him except the Title VII claims will be dismissed." *Id.* at 12. Pursuant to that opinion, the district court ordered Swindle's claims against Jefferson County and the Jefferson County Commission dismissed with prejudice, so that those entites were terminated as defendants in that case. Ex. F (Order). The district court held that Ms. Swindle was entitled to pursue her claims against the remaining defendants, and the parties commenced with discovery.[2] *See* Ex. G (Report of Parties Planning Meeting).

[2]Deputy Randy Stone and his wife, Alice Stone, have filed for bankruptcy under Chapter 7. *In Re: Randy B. Stone & Alice H. Stone*, 11-01348-TBB7, in the Northern Bankruptcy Court. Lara Swindle filed an adversary proceeding against Randy Stone in that case, *Lara Swindle v. Randy B. Stone, et al.*, AP No. 11-00201-TBB. Ms. Swindle requested relief from the stay in that case and also to have the adversary proceeding held in abeyance so that she could pursue a judgment against Stone in her case in the Northern District of Alabama. Ex. H (Motion for Relief From Stay). The

The parties in that case have now exchanged written discovery, taken the depositions of several potential witnesses, and completed discovery in that case. Sheriff Hale has since filed a motion for summary judgment, Ms. Swindle has responded to that motion, and Sheriff Hale has replied, so that the motion is now under submission to the district court. *See* Ex. H.

II. The Automatic Stay Does Not Apply to Sheriff Hale.

The automatic stay does not apply to Sheriff Hale for the reasons set forth herein. None of the remaining defendants in Swindle's district court case is a debtor in this case.[3] Furthermore, the Eleventh Circuit has not recognized any exception to the plain language of the statute, which limits the automatic stay provisions of the bankruptcy code to claims against debtors. Accordingly, the automatic stay does not apply to Ms. Swindle's claims, as none of the defendants in Swindle's district court case is a debtor in this case.

A. None of the Defendants to Plaintiff's Suit are Debtors in This Case, and Thus Plaintiff's Lawsuit Does Not Come Within the Plain Language of 11 U.S.C. §§ 362(a) and 922(a).

Although Jefferson County was initially named as one of several defendants in Ms. Swindle's complaint, Jefferson County is no longer a party to that case.

Bankruptcy Court granted Ms. Swindle's motion. Ex. I (Order).

[3]As noted above, Randy B. Stone and Alice H. Stone are debtors in a Chapter 13 bankruptcy case which is distinct from this one.

Jefferson County filed a motion to dismiss, and the district granted that motion, so that Jefferson County was terminated as a party on March 30, 2010, and is no longer a defendant in that case. Ex. F.

The automatic stay provision of the bankruptcy code states that a bankruptcy petition "operates as a stay, applicable to all entities, of . . . (1) the commencement or continuation . . . of a judicial, administrative or other action or proceeding **against the debtor** that was . . . commenced before the commencement of a case under this title." 11 U.S.C. § 362(a) (emphasis added). In addition, 11 U.S.C. § 922 states that in a municipal bankruptcy, "[a] petition filed under this chapter operates as a stay, in addition to the stay provided by section 362 of this title, applicable to all entities, of . . . (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against an officer or inhabitant of the debtor **that seeks to enforce a claim against the debtor**." 11 U.S.C. § 911(a) (emphasis added).[4]

[4] According to the legislative history, "[t]he automatic stay provided under section 362 of title 11 is incomplete for a municipality, because there is the possibility of action by a creditor against an officer or inhabitant of the municipality to collect taxes due the municipality. Section 85(e)(1) of current chapter IX [section 405(e)(1) of former title 11] stays such actions. Section 922 carries over that protection into the proposed chapter 9. Subsection (b) applies the provisions for relief from the stay that apply generally in section 362 to the stay under section 922.
(H. Rept. No. 95-595 to accompany H.R. 8200, 95th Cong., 1st Sess. (1977) p. 398.)

It is axiomatic that "[t]he automatic stay . . . affects only [the debtor]; it does not apply to plaintiff's claims against the [debtor]'s non-debtor co-defendants." *Chung v. New Silver Palace*, 246 F. Supp. 2d 220, 226 (S.D.N.Y. 2002); *see also Lynch v. Johns-Manville Sales Corp*., 710 F.2d 1194, 1196 (6th Cir. 1983) ("It is universally acknowledged that an automatic stay of proceeding accorded by § 362 may not be invoked by entities such as sureties, guarantors, co-obligors, or others with a similar legal or factual nexus to the Chapter 11 debtor.")[5] Nor should this Court find that unusual circumstances warrant extending the stay to non-debtor entities, as the Eleventh Circuit has not recognized any such exception to the plain language of the statute. *See Robert W. Selgrad, IRA v. U.S. Lending Corp.*, 1996 U.S. Dist. LEXIS 22927, 11-12 (S.D. Fla. Mar. 17, 1996) ("[t]here is nothing ambiguous about the language of section 362(a)(1), which extends an automatic stay only to the debtor, not related third parties... [W]e have no reason to believe that the Eleventh Circuit would adopt the *Robins* principle as a judicially-crafted exception

[5]*See, e.g.*, *American Prairie Constr. Co. v. Hoich*, 560 F.3d 780, 789 (8th Cir. 2009) ("It is well-established that stays pursuant to § 362(a) are limited to debtors and do not encompass non-bankrupt co-defendants.") *Brown v. Jevic*, 575 F.3d 322, 2009 U.S. App. LEXIS 17028, 2009 WL 2342731 at *4 (3rd Cir. 2009) (citing First, Fourth and Seventh Circuit cases); *Boucher v. Shaw,* 572 F.3d 1087, 1094 (9th Cir. 2009); *In re TXNB Internal* Case, 483 F.2d 292, 301 (5th Cir. 2007) ("Section 362(a) . . . does not apply, however, to actions not directed against the debtor or property of the debtor."; *In re Sunbeam Securities Litigation*, 261 B.R. 534, 536 (S.D. Fla. 2001) ("The law makes clear ... that the automatic stay provisions of section 362(a) are generally not available to third-party non-debtors.")

to the plain meaning of section 362(a)(1)."[6] Since the Eleventh Circuit has recognized no exception that would allow the automatic stay to apply to Ms. Swindle's claims against non-debtor defendants, and since Ms. Swindle brings no claims against Jefferson County or any of its officers, this Court should hold that under the plain language of the statute the automatic stay does not apply to Ms. Swindle's claims.

B. The Eleventh Circuit Does Not Recognize an "Unusual Circumstances" Exception to the Rule that the Automatic Stay Does Not Apply to Non-Debtors.

In seeking (and obtaining) dismissal of Ms. Swindle's claims before the district court, Sheriff Hale argued that "[u]nder Alabama law, sheriffs are deemed executive officers of the state" so that "lawsuits against sheriffs in their official capacities are, in essence, lawsuits against the state." Ex. C at 4. Likewise, Jefferson County argued that "the Jefferson County Commission has no control or authority over the Sheriff's Department, and that Plaintiff is not an employee of Jefferson County, Alabama." Ex. B at 4.

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[6] *See also In re Hillsborough Holdings Corp*., 130 B.R. 603, 605 (Bankr. M.D. Fla. 1991) (emphasis added): "This Court is not unmindful of a view of some that under appropriate circumstances it is proper to 'extend the automatic stay' to protect the non-debtors against discovery proceedings in actions brought against officers, directors and former employees of the debtor. **However, this Court is constrained to reject the proposition stated and the notion that the protection accorded by § 362 could be extended to non-debtors. There is nothing in the language of this Section or in the legislative history of this Section which warrants such a conclusion**."

The Eleventh Circuit has repeatedly held that "Alabama sheriffs are considered arms of the state." *Marsh v. Butler County, Ala.*, 268 F .3d 1014, 1028 (11 th Cir. 2001). As stated in *Turquitt v. Jefferson County*:

> Alabama's Constitution clearly denominates the sheriff as a member of the state's executive department. Ala. Const. of 1901, Art. V § 112. The Alabama Supreme Court, construing Art. V, § 112, as well as its legislative history, concluded that a sheriff is an executive officer of the state. *Parker v. Amerson*, 519 So.2d 442, 443 (Ala.1987). The court further held that because a sheriff is an executive officer, "a sheriff is not an employee of a county for the purposes of imposing liability on the county." *Id.* at 442; *see also Hereford v. Jefferson County*, 586 So.2d 209, 209 (Ala.1991)
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> We recognize that Alabama counties possess some duties with respect to county jails. However, none of these duties relates to the daily operation of the jails or to the supervision of inmates. The duties of the counties with respect to the jails "are limited to funding the operation of the jail and to providing facilities to house the jail." *Stark v. Madison County*, 678 So.2d 787, 787 (Ala.Civ.App. 1996).

137 F. 3d 1285. Given the bright line rule of *Turquitt,* it is well settled that Sheriff Hale is not an officer of Jefferson County. According to the district court's opinion and order, Jefferson County is not be liable to Swindle for any alleged violations of Title VII by Sheriff Hale or employees of the Jefferson County Sheriff's Department. Accordingly, Ms. Swindle's lawsuit does not constitute an action against Jefferson County or an attempt to enforce a claim against the County within the scope of 11 U.S.C. §§ 362(a) and 922(a).

The notion that an effort to collect from Sheriff Hale is an effort to collect from the Jefferson County is not supported by the plain language of the statute or by the case law interpreting this provision. This argument boils down to the proposition that Jefferson County is effectively a surety or guarantor for any judgment that Ms. Swindle may obtain against Defendant Hale so that actions against Sheriff Hale should be stayed. However, **"[i]t is universally acknowledged that an automatic stay of proceeding accorded by § 362 may not be invoked by entities such as sureties, guarantors, co-obligors, or others with a similar legal or factual nexus to the Chapter 11 debtor."**) *Lynch v. Johns-Manville Sales Corp*., 710 F.2d 1194, 1196 (6th Cir. 1983) (emphasis added). Similarly, as noted above, the Eleventh Circuit has recognized no "unusual circumstances" exception to the plain language of the automatic stay provision. Moreover, even the exception was utilized in this Circuit, the exception found in other circuits would not apply to the case at bar.[7]

[7]The Fourth Circuit has noted that in "unusual circumstances," the automatic stay may be extended to enjoin litigation against non-bankrupt co-defendants of the debtor. *A.H. Robins Co., Inc. v. Piccinin*, 788 F.2d 994, 999 (4th Cir. 1986). However, the Eleventh Circuit has not recognized such an exception, and Courts applying this exception have generally held that the automatic stay is properly extended to non-debtor defendants only in a case of a suit against a third party who is "entitled to **absolute indemnity** by the debtor on account of any judgment that might result against them in the case." *See., e.g.*, *Gulfmark Offshore, Inc. v. Benderr Shipbuilding & Repair Co., Inc.*, 2009 U.S. Dist. LEXIS 67926 (S.D. Ala. Aug. 3, 2009). No contractual or statutory basis for "absolute indemnity" is apparent in the present case. Moreover, "the court in Robins reaffirmed the refusal to grant a stay to a non-debtor 'where the debtor and [the non-debtor] are joint tortfeasors or where the non-debtor's liability rests upon his own breach of duty.'" *Dewitt v. Daley*, 336 B.R. 552, 557 (S.D. Fla. 2006) (examining *Robins*). In Ms. Swindle's suit, where each defendant's liability is premised upon his or her own breach of duty, the "unusual circumstances" exception recognized

Consistent with this authority, courts have held that mere financial ties between the debtor and a non-debtor defendant cannot justify extending the reach of the automatic stay beyond the plain language of the statute. In the recent case of *Donarumo v. Furlong (In re Furlong)*, 660 F.3d 81 (1st Cir. Mass. 2011), the First Circuit Court of Appeals reasoned that even financial ties involving 100% ownership of a non-debtor company by a debtor company did not justify extending the stay to the non-debtor: "we agree with the bankruptcy court that an automatic stay does not extend to the assets of a corporation in which the debtor has an interest, even if the interest is 100% of the corporate stock." The Court of Appeals observed that "[t]his proposition is well-settled." *Id.*[8]

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by the Fourth Circuit does not apply.

See also Robert W. Selgrad, IRA v. U.S. Lending Corp., 1996 U.S. Dist. LEXIS 22927, 13-14 (S.D. Fla. Mar. 17, 1996) ("[p]ut simply, the individual Defendants' indemnity agreement with U.S. Lending is not so absolute or watertight that U.S. Lending unquestionably will be responsible for all of the damages and fees that Spielman and Hayes might incur in this lawsuit. Moreover, even if we were to accept the Defendants' argument as to Spielman and Hayes, Equityline Securities and Equityline Financial Group do not have indemnity agreements with U.S. Lending, and cannot avail themselves of *Robins* on this basis.); *Lane v. Capital Acquisitions & Mgmt. Co.*, 2005 U.S. Dist. LEXIS 47663 (S.D. Fla. Nov. 4, 2005) (emphasis added) ("[t]he "unusual circumstances" doctrine on which Defendants rely is an **extremely narrow exception to the rule** and does not apply here.")

[8] *See also Mar. Elec. Co. v. United Jersey Bank*, 959 F.2d 1194, 1205-06 (3d Cir. 1991) (formal distinctions between debtor and non-bankrupt corporation are maintained for purposes of the automatic stay); *In re Winer*, 158 B.R. 736, 743 (N.D. Ill. 1993) (regardless of a "close nexus" between debtors and non-debtor entity, non-debtor entity is not subject to automatic stay); *Pers. Designs, Inc. v. Guymar, Inc.*, 80 B.R. 29, 30 (E.D. Pa. 1987) (even where bankruptcy debtor is 100% stockholder in non-bankrupt corporation, automatic stay does not apply to corporation).

In conclusion, the automatic stay imposed by the Jefferson County bankruptcy filing does not extend to Swindle's case against Sheriff Hale and the individual defendants, none of whom are debtors in this case, because 1) the plain language of 11 U.S.C. §§ 362(a) and 922(a) does not extend the stay to non-debtors; 2) the Eleventh Circuit has not recognized an "unusual circumstances exception"; and 3) even if it had, the defendants in Ms. Swindle's actions are not entitled to "absolute indemnity" from the County, and their liability is not derivative but premised on their own breach of duty. Accordingly, any "unusual circumstances" warranting extension of the stay to non-debtors are not present here.

C. The Alabama Constitution Establishes that Sheriff Hale and the Jefferson County Sheriff's Department Are an Arm of the State.

In the words of the Third Circuit, "formal distinctions between debtor-affiliated entities are maintained when applying the stay." *Maritime Electric Co. v. United Jersey Bank*, 959 F.2d 1194, 1205 (3rd Cir. 1991). The Third Circuit's observation is even more apt when the "formal distinctions" in question are political distinctions enacted by the Alabama State Constitution. Noting the "federalism and comity concerns" that arise when a federal court contemplates disregarding a state's own ordering of its political subdivisions, the Eleventh Circuit has reasoned that

> [w]hen it comes to creating subordinate public bodies and defining their relationship to one another and to itself, "the state is supreme and its

> legislative body, conforming its action to the state Constitution, may do as it will." *City of Trenton v. State of New Jersey*, 262 U.S. 182, 186-87, 43 S. Ct. 534, 536, 67 L. Ed. 937 (1923) (quoting [*1344] *Hunter v. Pittsburgh*, 207 U.S. 161, 178, 28 S. Ct. 40, 46, 52 L. Ed. 151 (1907)). **Defining the nature and relationship of such bodies, no less than determining their level of funding, is "uniquely an exercise of state sovereignty.**" *DeKalb Cty. Sch. Dist. v. Schrenko*, 109 F.3d 680, 689 (11th Cir.) (quoting *Stanley v. Darlington Cty. Sch. Dist.*, 84 F.3d 707, 716 (4th Cir.1996)), cert. denied, 118 S. Ct. 601 (1997). **We owe such determinations by the state legislature not only deference, but great deference.**

Lyes v. City of Riviera Beach, 166 F.3d 1332, 1343-1344 (11th Cir. 1999)(emphasis added).

The Eleventh Circuit's broad deference to federalism in *Lyes* should apply equally here. Alabama has exercised its sovereign authority and decreed in its Constitution that sheriffs are executives of the state rather than county officials. Along with the arguments discussed above, the federalism concerns discussed in *Lyes* weigh heavily in dictating that this court should give "great deference" to Alabama's ordering of its own political systems and that it should not extend the stay to Sheriff Hale, whom the Alabama Constitution dictates is an officer of the state.

III. Plaintiff's Motion for Relief From Automatic Stay.

A. Even if the Stay Applies, this Court Should Find that Cause Exists Under 11 U.S.C. § 362(d) to Lift the Stay.

Section 362(d) of the Bankruptcy Code provides that the bankruptcy Court may

grant relief from the automatic stay for "cause." 11 U.S.C. §362(d). Likewise, Section 922 dictates that "[s]ubsections (c), (d), (e), (f), and (g) of section 362 of this title [11 U.S.C. § 362(c), (d), (e), (f), and (g)] apply to a stay under subsection (a) of this section the same as such subsections apply to a stay under section 362(a) of this title [11 U.S.C. § 362(a)]." 11 U.S.C. §922(b). Accordingly, even if the Court rules that the automatic stay applies, the Court should grant Ms. Swindle relief under §362(d) and allow Ms. Swindle's action to proceed in the district court.

This Court has broadly recognized that "'[c]ause' for granting relief from the stay may exist if the equities in a particular case dictate that a lawsuit, or some other similar pending action, should proceed in a forum other than the Bankruptcy Court for purpose of liquidating the claim on which the lawsuit is premised." *In re Marvin Johnson's Auto Service, Inc., Debtor*, 192 B.R. 1008, 1013 (N.D.Ala.Bankr. 1996) (collecting cases). As recognized by this Court, "Congress intended that the stay be lifted to allow proceedings to continue in forums other than the bankruptcy Court under appropriate circumstances," and "[i]t will often be more appropriate to permit proceedings to continue in their place of origin, when no great prejudice to the bankruptcy estate would result, in order to leave the parties to their chosen forum and to relieve the bankruptcy court from any duties that may be handled elsewhere." *Id.* at 1014 (citing legislative history).

To determine whether cause exists under 11 U.S.C. §362(d) for granting relief from the automatic stay, the Court "must balance the hardship to [the plaintiff] if he is not allowed to continue the lawsuit, against the potential prejudice to the debtor, the bankruptcy estate, and to other creditors." *Id.* Factors the Court should consider in this balancing test include: (1) trial readiness; (2) judicial economy; (3) the resolution of preliminary bankruptcy issues; (4) costs of defense or other potential burden to the estate; (5) the creditor's chances of success on the merits; (6) specialized expertise of the non-bankruptcy forum; (7) whether the damages or claim that may result from the nonbankruptcy proceeding may be subject to equitable subordination under Section 510(c); (8) the extent to which trial of the case in the non-bankruptcy forum will interfere with the progress of the bankruptcy case; (9) the anticipated impact on the movant, or other nondebtors, if the stay is lifted; and (10) the presence of third parties over which the bankruptcy court lacks jurisdiction. *Id.*

"It is unnecessary for a court to find, before lifting the stay, that all considered factors weigh in favor of a party requesting relief from the stay." *Id.* at 1017. Here, the equities decree that Ms. Swindle's lawsuit against multiple defendants, none of whom is a debtor before this Court, should be allowed to proceed.

1. *Trial Readiness*

"Since both parties to the litigation benefit if the case can be tried

expeditiously, the bankruptcy court should take into consideration which of the competing courts is presently closer to being in a posture to try the case." *Id.* at 1015 fn. 8. After the Court's ruling on several Motions to Dismiss, the parties have now completed discovery and Sheriff Hale's motion for summary judgment is under submission to the district court. Accordingly, the district court is in a better posture to try the case than the Bankruptcy Court, and this factor weighs in favor of granting relief.

2. *Judicial Economy*

"Principles of judicial economy require that, without good reason, judicial resources should not be spent by duplicitous litigation, and that a lawsuit should only be tried once, that is if one forum with jurisdiction over all parties is available to dispose of all issues relating to the lawsuit." *Id.* Here, if the Court does not lift the stay as regards to Sheriff Hale, and Ms. Swindle's case proceeds against the other defendants, two trials will be necessary; one trial against the City of Hueytown and other defendants, and one trial against Sheriff Hale. Accordingly, in the interests of judicial economy, the Court should grant Ms. Swindle relief from the stay and allow this action to be tried once in the court where it was filed, conserving the resources of the parties and this Court and avoiding the risk of inconsistent outcomes.

3. *Resolution of Preliminary Bankruptcy Issues*

No preliminary bankruptcy issues need to be determined before Ms. Swindle's claims can be resolved. Accordingly, this factor does not weigh against relief.

4. *Costs of Defense or Other Potential Burden to the Estate*

"The cost of defense alone... is ordinarily not considered a sufficient basis for denying relief from the stay." *Id.* at 1016. Moreover, there is no evidence that "the debtor's defense costs will be appreciably larger if the case is tried in the [original] court rather than the bankruptcy court." *Id.* Here, there is no reason to believe that Jefferson County will incur any expenses as a result of defending Ms. Swindle's action: Jefferson County has been terminated as a defendant in Ms. Swindle's district court case. Accordingly, this factor does not weigh against relief.

5. *Creditor's Chance of Success on the Merits*

Ms. Swindle has already litigated motions to dismiss from several defendants. *See* Exx. B, C & D. In ruling on these motions, the Court held that Ms. Swindle should be allowed to proceed with claims against Sheriff Hale under Title VII. Ex. E at 12. In addition, the Court denied immunity to individual defendants David Newton and Randy Stone, who were only named in their individual capacities. *Id.* at 13-14. Given the Court's ruling on these motions, Ms. Swindle has demonstrated a substantial likelihood of success on the merits. Accordingly, this factor weighs in

favor of granting Ms. Swindle relief from the stay.

6. *Specialized Expertise of the Non-Bankruptcy Forum*

This case is an individual civil rights action. As discussed above, Ms. Swindle alleges that the defendants violated Title VII, deprived her of the Fourteenth Amendment right to equal protection, and violated Alabama tort law. None of the above issues requires the specialized expertise of the Bankruptcy Court. Moreover, the district court has gained considerable familiarity with the facts and legal issues of this case, as reflected in the Court's twenty-six-page memorandum opinion. Accordingly, this factor weighs in favor of granting Ms. Swindle relief from the automatic stay so that Ms. Swindle's case may be allowed to proceed in the original court.

7. *Whether the Damages or Claim that May Result from the Non-Bankruptcy Proceedings May Be Subject to Equitable Subordination Under 11 U.S.C. § 510(c).*

Ms. Swindle has claims for punitive damages only against the defendants sued in their individual capacities. Accordingly, the possibility that punitive damages claims might be subordinated is not decisive in the Court's ruling on the present motion. Moreover, "the possibility that the... jury may award substantial punitive damages against the debtor does not militate against lifting the stay." *Id.* at 1017.

8. *The Extent to Which Trial of the Case in the Non-Bankruptcy Forum Will Interfere With the Progress of the Bankruptcy Case.*

Given the size of the Jefferson County bankruptcy case, as well as the fact that Jefferson County is not a defendant in Ms. Swindle's lawsuit, there is little chance that the trial of Ms. Swindle's case in the non-bankruptcy forum will interfere substantially with the progress of the bankruptcy case. Ms. Swindle's case is against Sheriff Hale as an employer under Title VII and against Deputies Newton and Stone in their individual capacities, and not against Jefferson County or any of its officers. Moreover, "Section 502(c) allows this Court to estimate an unliquidated claim if liquidation would 'unduly delay administration of the case.'" *Id.* at 1018. Allowing the trial of Ms. Swindle's case in the district court where it was filed will not interfere with the progress of the Jefferson County bankruptcy case.

9. *The Anticipated Impact on the Movant if the Stay is Lifted.*

If the stay is not lifted, Ms. Swindle will suffer considerable hardship, as he "will be forced to try his case twice... with concomitant delay and additional... expense," once against any defendants whom this Court determines are within the scope of the stay, and once against the remaining defendants in the original court. *See id.* at 1019. Moreover, as to any claims tried before the Bankruptcy Court, Ms. Swindle will be denied her constitutional right to a trial by jury, as there is no

Constitutional right to a jury trial for the allowance and disallowance of claims under 11 U.S.C. § 502. *Id.* As stated by this Court, "a claimant's right to a jury trial should be accommodated if circumstances allow it to be done without substantial prejudice to estate administration." *Id.* Given the prejudice to Ms. Swindle if the stay is not lifted, this factor weighs in favor of relief.

10. *The Presence of Third Parties Over Which the Bankruptcy Court Lacks Jurisdiction.*

This Court has indicated that this factor concerns "[w]hether the relief will result in a partial or complete resolution of the issues." *Smith v. Tricare Rehabilitation Sys. (In re Tricare Rehabilitation Sys.)*, 181 B.R. 569, 573 (Bankr. N.D. Ala. 1994) (citing In re Curtis, 40 B.R. 795 (Bankr. D. Utah 1984)). As stated above, if the Court denies relief from the stay, Ms. Swindle will be forced to try his case twice, once in the Bankruptcy Court and once in the original court against those defendants whom this Court determines do not fall within the scope of the stay, meaning that "the danger of conflicting verdicts is a real possibility." *In re Johnson's*, 192 B.R. at 1019-1020. Here, as in *In re Johnson*, "[o]ne trial... will be most beneficial to all concerned. The Bankruptcy Court will be able to use its time and resources to resolve other matters... and [Ms. Swindle] will be able to cut expenses and time and will be able to try his case before a jury." *Id.* Given this

Court's inability to achieve complete resolution of Ms. Swindle's claims, this factor weighs in favor of granting relief.

IV. Conclusion

As discussed above, the automatic stay does not apply to any of Ms. Swindle's claims in her pending civil rights lawsuit, *Swindle v. Hale, et al.*, case no. 2:09-cv-01458-SLB, in the Northern District of Alabama since Jefferson County is not a defendant in that case. In the alternative, Ms. Swindle requests that this Court grant her relief from the automatic stay and allow her to pursue her claims in the district court where the case was originally filed and where substantial progress had been made to address the claims against all of the defendants.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that I have filed today, December 9, 2011, the above and foregoing with copies being served on counsel of record using the CM / ECF system:

/s/ H. Wallace Blizzard
Of Counsel